

AMENDED IN SENATE MARCH 8, 2010

SENATE BILL

No. 909

Introduced by Senator Wright

January 27, 2010

An act to amend Sections 1786.16 and 1786.20 of the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 909, as amended, Wright. Investigative consumer reporting agencies: disclosures.

Existing law requires a person who procures or causes to be prepared an investigative consumer report for employment purposes other than suspicion of wrongdoing to meet specified conditions, including, but not limited to, the name and address of the agency conducting the investigation, the nature and scope of the investigation, and information on consumer inspection.

This bill would additionally require a person who procures or causes to be prepared an investigative consumer report for employment purposes to provide a consumer with a Disclosure and Request for Consent for the Information to be Sent Outside of the United States or its Territories, as specified, if that person knows or should know that any part of an investigative consumer report will be prepared or processed outside the United States.

Existing law requires investigative consumer reporting agencies to establish reasonable procedures to ensure that specified, prohibited items of information concerning consumers are not part of the reports they furnish. Existing law generally provides that an investigative consumer reporting agency or user of information that fails to comply with any requirement under these provisions with respect to an

investigative consumer report is liable to the consumer who is the subject of the report for the sum of the greater of actual damages or \$10,000, the costs of the action, reasonable attorney's fees, and, in certain cases, punitive damages, as specified.

This bill would additionally require an investigative consumer reporting agency that prepares or processes in any manner an investigative consumer report, or portion thereof, outside of the United States or its territories to make specified disclosures to the potential user of this information, including, but not limited to, the country or countries where the report, or portion thereof, will be prepared or processed. The bill would also prohibit an investigative consumer reporting agency from transmitting a consumer's social security number, except for the last 4 digits, outside of the United States or its territories. The bill would require these agencies to adopt and publish a privacy policy relating to information contained in reports that are prepared or processed outside of the United States, as specified. The bill would provide that an investigative consumer reporting agency is liable to a consumer who is harmed by any act or omission that occurs outside the United States or its territories, as specified.

~~This bill exempts~~ *would exempt a person who procures or causes to be prepared an investigative consumer report and an investigative consumer reporting agency from these requirements if the requested information that pertains or relates to matters that occurred outside of the United States or its territories, or was stored, processed, or prepared outside of the United States or its territories prior to date the report was requested.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1786.16 of the Civil Code is amended
- 2 to read:
- 3 1786.16. (a) Any person described in subdivision (d) of Section
- 4 1786.12 shall not procure or cause to be prepared an investigative
- 5 consumer report unless the following applicable conditions are
- 6 met:
- 7 (1) If an investigative consumer report is sought in connection
- 8 with the underwriting of insurance, it shall be clearly and accurately
- 9 disclosed in writing at the time the application form, medical form,

1 binder, or similar document is signed by the consumer that an
2 investigative consumer report regarding the consumer's character,
3 general reputation, personal characteristics, and mode of living
4 may be made. If no signed application form, medical form, binder,
5 or similar document is involved in the underwriting transaction,
6 the disclosure shall be made to the consumer in writing and mailed
7 or otherwise delivered to the consumer not later than three days
8 after the report was first requested. The disclosure shall include
9 the name and address of any investigative consumer reporting
10 agency conducting an investigation, plus the nature and scope of
11 the investigation requested, and a summary of the provisions of
12 Section 1786.22.

13 (2) If, at any time, an investigative consumer report is sought
14 for employment purposes other than suspicion of wrongdoing or
15 misconduct by the subject of the investigation, the person seeking
16 the investigative consumer report may procure the report, or cause
17 the report to be made, only if all of the following apply:

18 (A) The person procuring or causing the report to be made has
19 a permissible purpose, as defined in Section 1786.12.

20 (B) The person procuring or causing the report to be made
21 provides a clear and conspicuous disclosure in writing to the
22 consumer at any time before the report is procured or caused to
23 be made in a document that consists solely of the disclosure, that:

24 (i) An investigative consumer report may be obtained.

25 (ii) The permissible purpose of the report is identified.

26 (iii) The disclosure may include information on the consumer's
27 character, general reputation, personal characteristics, and mode
28 of living.

29 (iv) Identifies the name, address, and telephone number of the
30 investigative consumer reporting agency conducting the
31 investigation.

32 (v) Notifies the consumer in writing of the nature and scope of
33 the investigation requested, including a summary of the provisions
34 of Section 1786.22.

35 (C) (i) If the person procuring or causing the report to be made
36 knows, or in the exercise of reasonable care should know, that any
37 part of an investigative consumer report is to be prepared or
38 processed outside the United States or its territories, that person
39 provides a Disclosure and Request for Consent for the Information
40 to be Sent Outside of the United States or its Territories, which is

1 an independent document that meets both of the following
2 requirements:

3 (I) The document provides all of the information described in
4 paragraphs (1) to (5), inclusive, of subdivision (e) of Section
5 1786.20.

6 (II) The title of the document is printed in at least 14-point
7 boldface type, and the content of the document is printed in at least
8 12-point type.

9 (ii) This subparagraph shall not apply if the information to be
10 obtained pertains or relates to matters that occurred outside of the
11 United States or its territories, *or was stored, processed, or*
12 *prepared outside of the United States or its territories prior to the*
13 *date the report was requested.*

14 (D) The consumer has authorized in writing the procurement
15 of the report.

16 (3) If an investigative consumer report is sought in connection
17 with the hiring of a dwelling unit, as defined in subdivision (c) of
18 Section 1940, the person procuring or causing the request to be
19 made shall, not later than three days after the date on which the
20 report was first requested, notify the consumer in writing that an
21 investigative consumer report will be made regarding the
22 consumer's character, general reputation, personal characteristics,
23 and mode of living. The notification shall also include the name
24 and address of the investigative consumer reporting agency that
25 will prepare the report and a summary of the provisions of Section
26 1786.22.

27 (4) The person procuring or causing the request to be made shall
28 certify to the investigative consumer reporting agency that the
29 person has made the applicable disclosures to the consumer
30 required by this subdivision and that the person will comply with
31 subdivision (b).

32 (5) The person procuring the report or causing it to be prepared
33 agrees to provide a copy of the report to the subject of the
34 investigation, as provided in subdivision (b).

35 (b) Any person described in subdivision (d) of Section 1786.12
36 who requests an investigative consumer report, in accordance with
37 subdivision (a) regarding that consumer, shall do the following:

38 (1) Provide the consumer a means by which the consumer may
39 indicate on a written form, by means of a box to check, that the
40 consumer wishes to receive a copy of any report that is prepared.

1 If the consumer wishes to receive a copy of the report, the recipient
2 of the report shall send a copy of the report to the consumer within
3 three business days of the date that the report is provided to the
4 recipient, who may contract with any other entity to send a copy
5 to the consumer. The notice to request the report may be contained
6 on either the disclosure form, as required by subdivision (a), or a
7 separate consent form. The copy of the report shall contain the
8 name, address, and telephone number of the person who issued
9 the report and how to contact them.

10 (2) Comply with Section 1786.40, if the taking of adverse action
11 is a consideration.

12 (c) Subdivisions (a) and (b) do not apply to an investigative
13 consumer report procured or caused to be prepared by an employer,
14 if the report is sought for employment purposes due to suspicion
15 held by an employer of wrongdoing or misconduct by the subject
16 of the investigation.

17 (d) Those persons described in subdivision (d) of Section
18 1786.12 constitute the sole and exclusive class of persons who
19 may cause an investigative consumer report to be prepared.

20 SEC. 2. Section 1786.20 of the Civil Code is amended to read:

21 1786.20. (a) An investigative consumer reporting agency shall
22 maintain reasonable procedures designed to avoid violations of
23 Section 1786.18 and to limit furnishing of investigative consumer
24 reports for the purposes listed under Section 1786.12. These
25 procedures shall require that prospective users of the information
26 identify themselves, certify the purposes for which the information
27 is sought and that the information will be used for no other
28 purposes, and make the certifications described in paragraph (4)
29 of subdivision (a) of Section 1786.16. From the effective date of
30 this title, the investigative consumer reporting agency shall keep
31 a record of the purposes for which information is sought, as stated
32 by the user. The investigative consumer reporting agency may
33 assume that the purpose for which a user seeks information remains
34 the same as that which a user has previously stated. The
35 investigative consumer reporting agency shall inform the user that
36 the user is obligated to notify the agency of any change in the
37 purpose for which information will be used. An investigative
38 consumer reporting agency shall make a reasonable effort to verify
39 the identity of a new prospective user and the uses certified by the
40 prospective user prior to furnishing the user any investigative

1 consumer reports. An investigative consumer reporting agency
2 may not furnish an investigative consumer report to a person unless
3 it has a written agreement that the investigative consumer reports
4 will be used by that person only for purposes listed in Section
5 1786.12.

6 (b) Whenever an investigative consumer reporting agency
7 prepares an investigative consumer report, it shall follow
8 reasonable procedures to assure maximum possible accuracy of
9 the information concerning the individual about whom the report
10 relates. An investigative consumer reporting agency shall retain
11 the investigative consumer report for two years after the report is
12 provided.

13 (c) An investigative consumer reporting agency may not make
14 an inquiry for the purpose of preparing an investigative consumer
15 report on a consumer for employment purposes if the making of
16 the inquiry by an employer or prospective employer of the
17 consumer would violate applicable federal or state equal
18 employment opportunity law or regulation.

19 (d) An investigative consumer reporting agency that prepares
20 or processes in any manner an investigative consumer report, or
21 any portion thereof, outside of the United States or its territories
22 shall adopt a privacy protection policy with regard to the
23 information contained in these reports. The investigative consumer
24 reporting agency shall publish this privacy protection policy on
25 an Internet Web site.

26 (e) An investigative consumer reporting agency that prepares
27 or processes in any manner an investigative consumer report, or
28 any portion thereof, outside of the United States or its territories,
29 shall disclose this fact to prospective users of the report. This
30 disclosure shall be made regardless of whether the report, or portion
31 thereof, was prepared or processed by a contractor, foreign affiliate,
32 wholly owned entity, or an employee of the investigative consumer
33 reporting agency. This disclosure shall be provided in an
34 independent document printed in at least 12-point type, and shall
35 contain all of the following information:

36 (1) The country or countries where the report, or portion thereof,
37 is being prepared or processed.

38 (2) The specific information about the consumer that is being
39 transmitted or transferred outside of the United States or its
40 territories.

1 (3) A hyperlink to the investigative consumer reporting agency's
2 privacy protection policy prepared and published pursuant to
3 subdivision (d).

4 (4) Contact information, including an e-mail address and a
5 telephone number, of a representative of the investigative consumer
6 reporting agency who can assist a consumer who is concerned that
7 his or her information has been compromised as a result of being
8 prepared or processed outside of the United States or its territories.

9 (5) A description of the appropriate process for remedying a
10 case of identity theft in the jurisdiction where the consumer resides,
11 including the telephone number and mailing address of any agency
12 responsible for consumer protection locally and nationally.

13 (f) An investigative consumer reporting agency shall be liable
14 to a consumer who is the subject of a report in the event that the
15 consumer is harmed by any act or omission that occurs outside the
16 United States or its territories as a result of the investigative
17 consumer reporting agency preparing or processing an investigative
18 consumer report, or portion thereof, outside of the United States
19 or its territories.

20 (g) In no event shall an investigative consumer reporting agency
21 transmit, transfer, or communicate a consumer's social security
22 number outside of the United States or its territories without first
23 redacting the number so that only the last four digits are visible.

24 (h) Subdivisions (d) to (g), inclusive, of this section shall not
25 apply if the information to be obtained pertains or relates to matters
26 that occurred outside of the United States or its territories, *or was*
27 *stored, processed, or prepared outside of the United States or its*
28 *territories prior to the date the report was requested.*